MONTANA LEGISLATIVE HISTORY

Chapter 537 1999

Bill H _____ S 243 Original bill & history ✓C

NO EXHIBITS INCLUDED

H. Committee on JUDICIARY			S. Committee on JUDICIARY		
Hearing Date(s)	3/9	✓C	Hearing Date(s)	2/1	✓C
EXEC. ACTION	3/10	✓C	EXEC ACTION	2/12	✓C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

CONFERENCE COMMITTEE

HEARING 3/26 ✓C

&

EXEC. ACTION

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

(b) that the youth detention facility is responsible for providing for the education of youth held in lawful custody in the facility;

(c) the educational program and personnel necessary to provide instruction at the facility. The district and the detention facility shall follow the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., in making educational placement decisions for youth with disabilities.

(d) the amount of funding to be contributed by the facility and the school district toward payment of the cost of establishing, operating, and maintaining the educational program."

Section 5. Section 41-5-1804, MCA, is amended to read:

"41-5-1804. Regional detention facilities. (1) Two or more counties may, by contract, establish and maintain a regional detention facility.

(2) For the purpose of establishing and maintaining a regional detention facility, a county may:

(a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and maintenance of a regional detention facility;

(b) levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping, operating, and maintaining the facility; and

(c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry out the purposes of 41-5-1803 and this section.

(3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(4) Contracts between counties participating in a regional detention facility must:

(a) specify the responsibilities of each county participating in the agreement;

(b) designate responsibility for operation of the regional detention facility;

(c) specify the amount of funding to be contributed by each county toward payment of the cost of establishing, operating, and maintaining the regional detention facility, including the necessary expenditures for the transportation of youth to and from the facility *but excluding the education costs funded by a school district pursuant to 41-5-1807*;

(d) include the applicable per diem charge for the detention of ~~youths~~ *youth* in the facility, as well as the basis for any adjustment in the charge; ~~and~~

(e) specify the number of beds to be reserved for the use of each county participating in the regional detention facility*; and*

(f) provide an educational program for youth held in the detention facility and in need of that service."

Section 6. Section 41-5-1807, MCA, is amended to read:

"41-5-1807. Responsibility for payment of detention costs. *(1)* Absent a contract or agreement between counties *and except as provided in subsection (2)*, all costs for the detention of a youth in a county or regional detention facility, including medical costs incurred by the youth during detention, must be paid by the county at whose instance the youth is detained.

(2) A detention facility providing an educational program for youth held in lawful custody at the facility is eligible to receive education funding calculated as follows:

(a) Before the end of each fiscal year, the facility shall compile the following information by school district:

(i) the number of youth detained in the facility over 9 consecutive days during the prior year; and

(ii) the total number of days the youth in subsection (2)(a)(i) were detained.

(b) The facility shall calculate the school district's obligation for educational services by multiplying the number of youth detained and the total number of days detained as provided in subsection (2) by $20 a day for each youth. The calculation must be sent to the school district no later than June 30. The school district shall transmit the amount calculated to the county treasurer of the county where the facility is located no later than July 15.

(c) The funds are to be used by the county for educational services provided by certified personnel in the detention facility located in the county and is subject to the requirements of Title 7, chapter 6, part 23."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [section 1].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 29, 1999

CHAPTER NO. 537

[SB 243]

AN ACT PROVIDING THAT IF A YOUTH IS PROSECUTED IN YOUTH COURT AND LATER TRANSFERRED TO DISTRICT COURT, THE YOUTH MAY NOT BE SENTENCED TO AN ADULT CORRECTIONAL FACILITY; REVISING THE PURPOSE OF THE YOUTH COURT ACT; REVISING THE EXTENDED JURISDICTION PROSECUTION ACT; PROVIDING THAT THE ACT DOES NOT APPLY TO CERTAIN OFFENSES; PROVIDING THAT THE COMBINED TIME OF SENTENCE UNDER AN EXTENDED JURISDICTION PROSECUTION MAY NOT EXCEED THE TIME OF IMPRISONMENT THAT AN ADULT COULD RECEIVE UNDER AN ADULT PROSECUTION; PROVIDING THAT PLACEMENT WITH THE DEPARTMENT OF CORRECTIONS CANNOT EXCEED THAT AMOUNT OF TIME THAT AN ADULT CAN BE SENTENCED TO THE DEPARTMENT; CLARIFYING THAT A SENTENCE UNDER THE EXTENDED JURISDICTION PROSECUTION ACT IS A SINGLE SENTENCE; AMENDING SECTIONS 41-5-102, 41-5-206, 41-5-208, 41-5-1602, 41-5-1604, AND 41-5-1605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, juveniles who are 17 to 18 years of age frequently have difficulty completing their Youth Court sentences, particularly felony offenses, before they reach age 18; and

Senate BILL NO. 243

INTRODUCED BY Thane
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IF A YOUTH IS PROSECUTED IN YOUTH COURT AND LATER TRANSFERRED TO DISTRICT COURT, THE YOUTH MAY NOT BE SENTENCED TO AN ADULT CORRECTIONAL FACILITY; REVISING THE EXTENDED JURISDICTION PROSECUTION ACT; PROVIDING THAT THE ACT DOES NOT APPLY TO CERTAIN OFFENSES; PROVIDING THAT THE COMBINED TIME OF SENTENCE UNDER AN EXTENDED JURISDICTION PROSECUTION MAY NOT EXCEED THE TIME OF IMPRISONMENT THAT AN ADULT COULD RECEIVE UNDER AN ADULT PROSECUTION; PROVIDING THAT PLACEMENT WITH THE DEPARTMENT OF CORRECTIONS CANNOT EXCEED THAT AMOUNT OF TIME THAT AN ADULT CAN BE SENTENCED TO THE DEPARTMENT; CLARIFYING THAT A SENTENCE UNDER THE EXTENDED JURISDICTION PROSECUTION ACT IS A SINGLE SENTENCE; AMENDING SECTIONS 41-5-206, 41-5-208, 41-5-1602, 41-5-1604, AND 41-5-1605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, juveniles who are 17 to 18 years of age frequently have difficulty completing their Youth Court sentences, particularly felony offenses, before they reach age 18; and

WHEREAS, extending juvenile jurisdiction with the possibility of an adult sanction for failure to comply with the conditions of a stayed sentence or for additional criminal behavior by the youth has been shown to be an effective incentive in other states to rehabilitate juveniles to keep them out of the adult correctional system and allow them to pay restitution, finish treatment, and complete their education; and

WHEREAS, the maximum extension or period of jurisdiction may not exceed the period of an adult sentence without violating equal protection; and

WHEREAS, limiting section 41-5-208, MCA, supervision transfers after the youth reaches the age of 18 to additional community corrections programs of the Department of Corrections subject to the same adult sentence limit on supervision will also allow juveniles to complete their sentences, to be held accountable, and to avoid an adult conviction, without violating equal protection of the laws.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-206, MCA, is amended to read:

"**41-5-206. Filing in district court prior to formal proceedings in youth court.** (1) The county attorney may, in the county attorney's discretion, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103; or

(iv) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated or felony assault as defined in 45-5-202;

(iv) robbery as defined in 45-5-401;

(v) burglary or aggravated burglary as defined in 45-6-204;

(vi) aggravated kidnapping as defined in 45-5-303;

(vii) possession of explosives as defined in 45-8-335;

(viii) criminal sale of dangerous drugs as defined in 45-9-101;

(ix) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(x) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(x);

(xi) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403.

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if the court finds that there is

probable cause to believe that the youth has committed the alleged offense and that, considering the seriousness of the offense and in the interests of community protection, the case should be filed in the district court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court judge.

(6) If a youth is found guilty in district court of any of the offenses enumerated in subsection (1) and is sentenced to the state prison, the commitment must be to the department of corrections not to exceed the period of time allowed in 46-18-201. The department shall confine the youth in whatever institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals ~~with~~ With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) A youth whose case is filed in the district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical separation as well as sight and sound separation from adults accused or convicted of criminal offenses."

Section 2. Section 41-5-208, MCA, is amended to read:

"**41-5-208. Transfer of supervisory responsibility to district court after juvenile disposition -- nonextended jurisdiction and nontransferred cases.** (1) After adjudication by the court of a case that was

not transferred to district court under 41-5-206 and that was not prosecuted as an extended jurisdiction juvenile prosecution under part ~~11~~ 16 of this chapter, the court may, on the youth's motion or the motion of the county attorney, transfer jurisdiction to the district court and order the transfer of supervisory responsibility from juvenile probation services to adult probation services. A transfer under this section may be made to ensure continued compliance with the court's disposition under 41-5-1512 or 41-5-1513 and may be made at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age.

(2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The hearing must be held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to receive:

(a) written notice of the motion to transfer;

(b) an opportunity to be heard in person and to present witnesses and evidence;

(c) a written statement by the court of the evidence relied on and reasons for the transfer;

(d) the right to cross-examine witnesses, unless the court finds good cause for not allowing confrontation; and

(e) the right to counsel.

(3) After the hearing, if the court finds by a preponderance of the evidence that transfer of continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.

(4) If a youth whose case has been transferred to district court under this section violates a disposition previously imposed under 41-5-1512 or 41-5-1513, the district court may, after hearing, impose conditions as provided under 46-18-201 through 46-18-203.

(5) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the district court may order that the youth, after reaching 18 years of age:

(a) be incarcerated in a ~~state adult correctional facility,~~ boot camp~~,~~ or prerelease center; or

(b) be supervised by the department.

(6) The district court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age."

Section 3. Section 41-5-1602, MCA, is amended to read:

"**41-5-1602. Extended jurisdiction juvenile prosecution -- designation.** (1) A youth court case involving a youth alleged to have committed an offense that would be a felony if committed by an adult, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, is an extended jurisdiction juvenile prosecution if:

(a) the youth was at least 14 years of age at the time of the alleged offense, the county attorney requests that the case be designated an extended jurisdiction juvenile prosecution, a hearing is held under 41-5-1603, and the court designates the case as an extended jurisdiction juvenile prosecution;

(b) the county attorney designates in the delinquency petition that the proceeding is an extended jurisdiction juvenile prosecution and the youth is alleged to have committed:

(i) an offense that is listed under 41-5-206, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed; or

(ii) any offense that would be a felony if committed by an adult, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, in which the youth allegedly used a firearm, if the youth was at least 12 years of age at the time of the alleged offense; or

(c) after a hearing upon a motion for transfer of the matter of prosecution to the district court under 41-5-206, the court designates the case as an extended jurisdiction juvenile prosecution.

(2) To enforce the court's disposition in an extended jurisdiction juvenile prosecution, the court shall retain jurisdiction as provided in 41-5-205."

Section 4. Section 41-5-1604, MCA, is amended to read:

"**41-5-1604. Disposition in extended jurisdiction juvenile prosecutions.** (1) (a) After designation as an extended jurisdiction juvenile prosecution, the case must proceed with an adjudicatory hearing, as provided in 41-5-1502. If a youth in an extended jurisdiction juvenile prosecution admits to or is adjudicated to have committed an offense that would be a felony if committed by an adult, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the court shall, subject to subsection (1)(b), impose a single judgment consisting of:

~~(a)~~(i) ~~impose~~ one or more juvenile dispositions under 41-5-1512 or 41-5-1513; and

~~(b)~~(ii) ~~impose~~ any sentence allowed by the statute that establishes the penalty for the offense of which the youth is convicted and that would be permissible if the offender were an adult. The

execution of the sentence imposed under this subsection must be stayed on the condition that the youth not violate the provisions of the disposition order and not commit a new offense.

(b) The combined period of time of a juvenile disposition under subsection (1)(a)(i) plus an adult sentence under subsection (1)(a)(ii) may not exceed the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This subsection does not limit the power of the department to enter into a parole agreement with the youth pursuant to 52-5-126.

(2) If a youth prosecuted as an extended jurisdiction juvenile after designation by the county attorney in the delinquency petition under 41-5-1602(1)(b) admits to or is adjudicated to have committed an offense that would be a felony if committed by an adult that is not an offense described in 41-5-1602(1)(b), except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the court shall adjudicate the youth delinquent and order a disposition under 41-5-1513.

(3) If a youth in an extended jurisdiction juvenile prosecution admits to or is adjudicated to have committed an offense that would not be a felony if committed by an adult, the court ~~may impose, with the youth's consent, a disposition provided under subsection (1)(b). If the youth does not consent to disposition under subsection (1)(b), the court~~ shall impose a disposition as provided under subsection (1)(a)."

Section 5. Section 41-5-1605, MCA, is amended to read:

"**41-5-1605. Revocation of stay -- disposition.** (1) If a court has imposed on a youth a sentence stayed under 41-5-1604~~(1)(b)~~(1)(a)(ii) and the youth violates the conditions of the stay or is alleged to have committed a new offense, the court may, without notice, direct that the youth be taken into immediate custody. The court shall notify the youth, the youth's counsel, and the youth's parents, guardian, or custodian in writing of the reasons alleged to exist for revocation of the stay of execution of the sentence.

(2) (a) ~~If the youth challenges the reasons for the revocation, the~~ The court shall hold a revocation hearing at which the youth is entitled to receive:

(i) written notice of the alleged violation;

(ii) evidence of the alleged violation;

(iii) an opportunity to be heard in person and to present witnesses and evidence;

(iv) the right to cross-examine witnesses, unless the court finds good cause for not allowing confrontation; and

(v) the right to counsel.

(b) After the revocation hearing, if the court finds by a preponderance of the evidence presented that the conditions of the stay have been violated or that the youth has committed a new offense, the court shall provide the youth with a written statement of the evidence relied on and reasons for revocation and shall:

(i) continue the stay and place the youth on probation;

(ii) impose one or more dispositions under 41-5-1512 or 41-5-1513 if the youth is under 18 years of age; or

(iii) subject to 41-5-206(6) and (7) and 41-5-1604(1)(b), order execution of the sentence imposed under 41-5-1604~~(1)(b)~~(1)(a)(ii). The court shall order credit for any time served prior to revocation under a disposition under 41-5-1604(1)(a)(i).

(3) Upon revocation and disposition under subsection (2)(b)(iii), the youth court shall transfer the case to the district court. Upon transfer, the offender's extended jurisdiction juvenile status is terminated and youth court jurisdiction is terminated. Ongoing supervision of the offender is with the department, rather than the youth court's juvenile probation services."

NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

- END -

FISCAL NOTE

Bill #: **SB0243**

Title: **Revise extended jurisdiction prosecution act to exclude homicide offenses**

Primary Sponsor: **Fred Thomas**

Status: **As introduced**

Fred Thomas 1/23/99
Sponsor signature Date

Dave Lewis 1.23.99
Dave Lewis, Budget Director Date

Fiscal Summary

	FY2000 Difference	FY2001 Difference
Expenditures:	$0	$0
Revenue:	$0	$0
Net Impact on General Fund Balance:	**$0**	**$0**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. This bill may impact populations of the boot camp and pre-release programs as well as adult probation caseloads. The fiscal impact is not measurable, as the Department of Corrections (DOC) is not able to quantify the court's discretionary usage of the provisions of this bill.
2. This bill may also impact the population of correctional facilities due to a longer period of supervision.
3. There is no fiscal impact to the Department of Justice.
4. There is no fiscal impact to the state-funded Judiciary.
5. There is no fiscal impact to the Department of Public Health and Human Services.

SB 243

TECHNICAL NOTES:

1. Under current law 46-18-201, MCA, does not allow for direct commitment to boot camp or pre-release. DOC and the facility must approve of the placement. Section 41-5-208 (5) (a), MCA, could pose a dilemma for the DOC in the case of an offender who is not approved or fails the boot camp, pre-release or probation supervision, as this bill does not allow for placement in any other correctional facility.
2. The increased criminal penalties allowed under this legislation appear to violate the due process protections of the U.S. and Montana Constitutions.

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 1, 1999 at 10:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Ric Holden (R)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 243, SB 258, 1/30/1999
Executive Action: SB 232, SB 236, SB 257

HEARING ON SB 243

Sponsor: **SEN. FRED THOMAS, SD 31, Stevensville**

Proponents: **John Larson, District Judge from Missoula**

Opponents: **None**

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 31, Stevensville, introduced SB 243 which addresses a 1997 decision of the Montana Supreme Court which held the original 1995 Extended Juvenile Jurisdiction Act violated equal protection. A copy of the decision was provided, **EXHIBIT(jus25a01).** The legislature first amended the Extended Juvenile Jurisdiction Act in 1997 with SB 99. This legislation also amends Section 41-5-208 which has not been ruled upon by the Montana Supreme Court. Current law provides for post adjudication transfer of supervision over certain youths between the ages of 18 and 21 from Youth Court to District Court. This also includes supervision over certain youths from Juvenile Probation Services to Adult Probation Services. The Extended Juvenile Jurisdiction Act incorporates a longer sentence, up to a maximum that could be imposed on an adult. The longer sentence is to encourage the youth to perform the judgment and end up with only a juvenile record. The Supreme Court opinion holds that a juvenile under the original Extended Jurisdiction Act could not receive a longer sentence than an adult because of his age. This legislation would limit the maximum sentence to a period no longer than the maximum adult sentence.

{Tape : 1; Side : A; Approx. Time Counter : 10.07}

Proponents' Testimony:

John Larson, Missoula District Court Judge, explained that the 1997 amendments dealt with issues of due process, jurisdiction, and double jeopardy. Those issues were not the subject of the 1997 Supreme Court decision. Six members of the Montana Supreme Court decided this case on equal protection grounds and stated that due to the rights accorded juveniles in Section 2, Article XV, the total number of years that a juvenile could be subject to this act needed to be limited to the same maximum set for an adult. By looking at the changes also made in the Youth Court Act in 1995, the Supreme Court reasoned that the expansion of the Act which provided accountability and punishment provided that the gap between the juvenile system and the adult system was so narrow that for all practical purposes the number of years spent in the juvenile system should be counted followed by adding on the number of years in the adult system. Last session SB 54 dealt with juveniles at the very beginning stages of the process. There is a gap between the juveniles at the beginning of the system and those already transferred into the adult system.

When the Extended Jurisdiction Act was first enacted in 1995, there was a very difficult transfer provision which meant that

sometimes juveniles would stay in juvenile detention for up to a year pending that transfer. In 1997, the Juvenile Justice Commission made that transfer into adult court easier. All that needs to be done for certain offenses is that a motion for leave to file needs to be filed with the judge. The judge will sign off on the motion if there is probable cause that the offense has been committed. Several very serious offenses are listed. The judge has discretion not to transfer a juvenile into the adult system. Extended jurisdiction keeps the juvenile in the juvenile system and the sentence that is imposed is a combination of a juvenile disposition and the maximum period that an adult could be sentenced under the underlying statute. The adult portion of that sentence is stayed to encourage the juvenile to perform the judgment.

This statute was initially adopted in Minnesota in 1995. Minnesota has been tracking their adult certifications and extended jurisdiction, **EXHIBIT(jus25a02)**. The data shows that this is filling the gap between juveniles who commit serious offenses and are transferred into the adult system and juveniles who are not. This gives the juvenile an extra chance. It also gives the judge and the probation officers an extra lever to encourage the juveniles to perform that judgment.

In 1997 the placement authority for juveniles at Pine Hills was changed from age 19 to age 18. The tools left to a juvenile probation officer after age 18 are very limited. The extended jurisdiction component gives the additional incentive to fully perform the juvenile judgment. Section 41-5-208 was also a part of SB 54 and is still being used. **Judge Larson** added that he currently has two young men who are almost 18 and have admitted that they severely beat up a correctional officer at Pine Hills as they were attempting to escape. They were charged as juveniles and have subsequently turned 18. They did not commit any of the transferable offenses listed under Section 41-5-206. There will be a juvenile judgment entered for them. How will they be encouraged to follow through on that judgment? The probation officer has very few tools. Section 41-5-208 makes available the community corrections programs of the adult system.

The key to the juvenile system has always been to fashion more individual solutions for the young people. This legislation provides for this to occur by either the Youth Court or the District Court. The data from Minnesota shows that this is working and very few of the sentences are actually revoked and go into the adult system. The same violent offenses that were excluded in SB 54 are excluded in SB 243. This is not applied to offenses of homicide or a serious violent crime.

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 10.18}

Questions from Committee Members and Responses:

SEN. BARTLETT asked why the maximum age for a juvenile to be at Pine Hills was reduced from 19 to 18. **Judge Larson** explained that the Department of Corrections requested that the maximum age of commitment to Pine Hills and Riverside be reduced. He personally opposed that request, but the change became law.

SEN. BARTLETT requested clarification of Justice Trieweiler's Specially Concurring Opinion that the act violates the prohibition against double jeopardy. **Judge Larson** maintained that Justice Trieweiler was the only Justice to use that analysis. He interpreted Montana's double jeopardy clause to be broader than the federal clause. By addressing the sections dealing with equal protection and the rights of juveniles under 18, which six members concurred in, he believes that he has addressed the primary concerns of the Court.

SEN. BARTLETT contended that the Supreme Court identified physical liberty as a fundamental right which means that this statute, even revised, will be subject to a strict scrutiny test. It does proffer the potential for a juvenile to lose their physical liberty by being placed in a pre-release center, intensive supervision, or the boot camp. The Article on rights of minors was designed solely to enhance protections for minors. The act that was being struck down enhanced punitive measures rather than protections for minors. The testimony given this morning addressed a very narrow section of the statute and the court decision to which it applied.
Judge Larson did not share **SEN. BARTLETT'S** reading of the opinion in that the Court applied a middle tier analysis to the prior statute and should apply a middle tier analysis to the amended statute. The pre-release language was not part of the opinion. Section 41-5-208 remains a juvenile sentence throughout and thus provides an enhancement due to the fact that if a juvenile sentence is successfully completed, a juvenile adjudication is much more beneficial than an adult adjudication. The juvenile continues to be able to perform the juvenile judgment even as long as age 25, maintain that juvenile judgment and have it sealed rather than go into an adult adjudication. The limitation on the sentence addresses both sections of the Constitution that were found unconstitutional by the Montana Supreme Court.

{Tape : 1; Side : A; Approx. Time Counter : 10.25}

Closing by Sponsor:

SEN. THOMAS closed on SB 243.

HEARING ON SB 258

Sponsor: **SEN. DUANE GRIMES, SD 20, Clancy**

Proponents: **Judy Wang, Assistant Missoula City Attorney**
Tootie Welker, Sanders County Coalition for Families
Kathy Sewell, Montana Coalition Against Domestic and Sexual Violence
Rebecca Moog, Montana Women's Lobby

Opponents: **None**

Opening Statement by Sponsor:

SEN. DUANE GRIMES, SD 20, Clancy, introduced SB 258. He conveyed that the domestic abuse shelters around the state provide a safety net for families. Oftentimes mothers with their children in hand seek refuge in domestic abuse shelters. The other part of this effort is legislation that provides that sexual gratification does not need to be present in order to charge someone with a crime. It is unspeakably sad that this legislation needs to be considered. Approximately 8,000 families have been helped by domestic abuse shelters. It is important to make sure that temporary orders of protection do not lapse. In these circumstances when one is faced with an extremely hostile and dangerous situation, the temporary orders should not lapse because of the system because this leaves people hanging out on a limb.

{Tape : 1; Side : A; Approx. Time Counter : 10.32}

Proponents' Testimony:

Judy Wang, Assistant Missoula City Attorney, reported that one of the laws that the legislature has enacted to help victims of domestic violence is to give victims an order of protection so that they can have an order from a judge that states that the offender must stay away. If the offender cannot have contact with the victim, less crimes will occur.

In 1997, the Montana Supreme Court ruled in State v. Asmundson, ____ Mont. ____, 940 P.2d 104 (1997), that all orders of protection must go to hearing within 20 days. The effect of the ruling is if a victim receives an order of protection seeking refuge from a violent offender, the matter must go to hearing.

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 12, 1999 at 8:00 A.M., in Room 108 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 153, SB 402, SB 403, 2/9/1999
Executive Action: SB 16, SB 243, SB 303, SB 237, SB 357, SB 363, SB 251

EXECUTIVE ACTION ON SB 243 AND 250

Discussion:

CHAIRMAN GROSFIELD explained that SB 243 and SB 250 were passed out of Committee several days ago but he has not signed the standing committee report. Senate Bill 250 was sponsored by **SEN.**

BARTLETT and repeals the sections of law which were held to be unconstitutional by the Supreme Court. Senate Bill 243 was sponsored by **SEN. THOMAS** and changed the law in response to the same decision. Following executive action there was discussion regarding the purpose section in the Montana Youth Court Act. Amendments - SB024301.avl, **EXHIBIT(jus35a01)** have been drafted to address this issue.

Ms. Lane explained that the amendments address the purpose clause in the Youth Court Act and reinserts the pre-1995 language. The Act was amended in 1995 at the request of **REP. BRAD MOLNAR.** The Court referred to the changes in the purpose clause and held that the purpose of the Youth Court Act had been changed from helping youths to being more retributive. They relied on this change to strike down the Extended Jurisdiction Prosecution Act.

Motion/Vote: **SEN. HALLIGAN** moved to **RECONSIDER THE COMMITTEE'S ACTION ON SB 243. The motion carried unanimously.**

Discussion:

SEN. HALLIGAN explained that it would be necessary to have unanimous support from the Committee to accomplish what is being proposed in the amendments. This was a very strong point for **REP. MOLNAR.** He added that the language that was added was held unconstitutional by the Supreme Court.

SEN. BARTLETT questioned whether the chief proponent of SB 243, **Judge Larson,** was apprized of the amendments. **SEN. HALLIGAN** agreed to review the amendments with him.

SEN. BARTLETT explained that the Court held that as compared to the pre-1995 declaration of purpose, the Act was much more preventative and contained punitive goals. It sought to prevent delinquency through imposition of enforceable and immediate consequences. She added that the purpose section of the act certainly was significant in the Court decision but it was also a strong conviction of **REP. MOLNAR** that his 1995 amendments were a very important element of this Act.

CHAIRMAN GROSFIELD added that it was his understanding that it was held to be unconstitutional.

SEN. BARTLETT clarified that as applied in the Extended Jurisdiction Prosecution Act it was unconstitutional. In and of itself, it may not be unconstitutional.

Motion/Vote: **SEN. HALLIGAN** moved that **SB 243 BE AMENDED. The motion carried unanimously.**

Motion/Vote: **SEN. HALLIGAN** moved that **SB 243 DO PASS AMENDED. The motion carried unanimously - 7-0.**

EXECUTIVE ACTION ON SB 251

Motion: **SEN. HALLIGAN** moved that **SB 251 BE TABLED.**

Discussion:

CHAIRMAN GROSFIELD related that he was disappointed in the hearing. This bill contains several good ideas. The proponents fell apart because they couldn't agree on a word or two. He requested that the table motion be put on hold for awhile.

SEN. HALLIGAN withdrew his motion.

SENATORS DOHERTY and **HOLDEN**, excused earlier, now present at the meeting.

{Tape : 1; Side : A; Approx. Time Counter : 8.18}

EXECUTIVE ACTION ON SB 16

Ms. Lane explained that the amendments involved two alternatives. The amendment - SB001605.avl, **EXHIBIT(jus35a02)**, is a substitute bill which would provide limited liability for governmental entities only. In the amendment - SB001604.avl, **EXHIBIT(jus35a03)**, Section 1 is identical to Section 1 in the other amendment and then Section 2 is added which is non-governmental limited liability. The hospital issue is covered in Section 1 in both amendments. In (1) it states "(1) Except as provided in subsection (2), a governmental entity . . . or a health care facility, as defined in 50-5-101". This is added to governmental immunity which is immunity and not just limited liability. Subsection (2) of the new Section 1 states that this does not apply to a health care facility if death or bodily injury results from the failure or malfunction.

Motion: **SEN. GRIMES** moved to **AMEND SB 16 - SB001605.avl.**

Discussion:

Jeff Brant, Chief of Policy Development, Customer Relations Bureau, Information Services Division, related that they saw that a number of states were looking into addressing the Y2K problem with legislation in regard to immunity. Some of the changes were

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 9, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 243, SB 33, SB 481, SB 250, 3/2/1999

Executive Action: SB 165-Be Concurred in as Amended, SB 222-Be concurred in Amended, SB 87-Be Concurred In

(Senator Thomas testifying on a different bill in another committee; unable to be present for SB 481, therefore House Judiciary went into Executive Action.)

EXECUTIVE ACTION ON SB 222

Motion: **REP. YOUNKIN** moved that **SB 222 BE CONCURRED IN.**
Motion/Vote: **REP. NOENNIG** moved that **SB 222 BE AMENDED. Motion carried 17-3 with Jore, McGee, and Molnar voting no.**
Motion: **REP. KITZENBERG** moved that **SB 222 BE TABLED. Motion failed on a voice vote.**
Motion/Vote: **REP. SHOCKLEY** moved that **SB 222 BE CONCURRED IN AS AMENDED. Motion carried 14-6 with Ahner, R. Clark, Jore, Kitzenberg, McGee, and Molnar voting no.**
{Tape : 1; Side : A; Approx. Time Counter : 44 - 218}

EXECUTIVE ACTION ON SB 22

Motion/Vote: **REP. MCGEE** moved **SB 22-BE RECONSIDERED AND REMOVED FROM "TABLED" STATUS. Motion failed 6-14 with Ahner, Anderson, P. Clark, Eggers, Facey, Gutsche, Hurdle, Jore, Kitzenberg, Molnar, Noennig, Shockley, Soft, and Wyatt voting no.**
{Tape : 1; Side : A; Approx. Time Counter : 218 - 367}

EXECUTIVE ACTION ON SB 165

Motion: **REP. WILLIAMS** moved that **SB 165 BE CONCURRED IN.**
Motion/Vote: **REP. NOENNIG** moved that **SB 165 BE AMENDED. Motion carried 18-2 with P. Clark and Eggers voting no.**
Motion/Vote: **REP. NOENNIG** moved that **SB 165 BE CONCURRED IN AS AMENDED. Motion carried 16-4 with Anderson, P. Clark, Eggers, and Kitzenberg voting no.**
{Tape : 1; Side : A; Approx. Time Counter : 367 - 550}
{Tape : 1; Side : B; Approx. Time Counter : 0 - 233}

HEARING ON SB 243

Sponsor:

Senator Thomas presented SB 243.
{Tape : 1; Side : B; Approx. Time Counter : 233 - 350}

Proponents:

John Larson, District Court Judge, Missoula
{Tape : 1; Side : B; Approx. Time Counter : 350 - 550}
{Tape : 2; Side : A; Approx. Time Counter : 0 - 92}
EXHIBIT(juh53a01)
EXHIBIT(juh53a02)
EXHIBIT(juh53a03)
EXHIBIT(juh53a04)

Opponents:

None

Informational:

None

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 92 - 380}

Closing by Sponsor:

Senator Thomas made closing statements.
{Tape : 2; Side : A; Approx. Time Counter : 380 - 407}

Rep. Hurdle wanted to ask another question of Judge Larson;
{Tape : 2; Side : A; Approx. Time Counter : 407 - 443}

HEARING ON SB 33

Sponsor:

Senator Thomas presented SB 33.
{Tape : 2; Side : A; Approx. Time Counter : 443 - 550}
EXHIBIT(juh53a05)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 10, 1999 at 8:00 A.M., in Room 312 - 2 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 190, SB 153, SB 232, SB 171, 3/2/1999

Executive Action: SB 250-Tabled, SB 243-Be Concurred in as Amended

HEARING ON SB 190

Sponsor:

Senator Halligan presented SB 190.
{Tape : 1; Side : A; Approx. Time Counter : 26 - 38}

Proponents:

Greg Petesch, Code Commissioner
{Tape : 1; Side : A; Approx. Time Counter : 38 - 53}

Opponents:

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 53 - 166}

Closing by Sponsor:

Senator Halligan made closing statements.
{Tape : 1; Side : A; Approx. Time Counter : 166 - 183}

HEARING ON SB 153

Sponsor:

Senator Halligan presented SB 153.
{Tape : 1; Side : A; Approx. Time Counter : 183 - 240}

Proponents:

Joe Mazurek, Attorney's General Office
{Tape : 1; Side : A; Approx. Time Counter : 240 - 443}
EXHIBIT(juh54a01)

EXHIBIT(juh54a02)

{Tape : 2; Side : B; Approx. Time Counter : 67 - 110}

Closing by Sponsor:

Senator Holden made closing statements.
{Tape : 2; Side : B; Approx. Time Counter : 110 - 124}

EXECUTIVE ACTION ON SB 250

Motion: **REP. MCGEE** moved that **SB 250 BE CONCURRED IN.**
Motion/Vote: **REP. MCGEE** moved that **SB 250 BE AMENDED. Motion carried 20-0.**
Motion/Vote: **REP. MCGEE** moved that **SB 250 BE CONCURRED IN AS AMENDED.(THEN ALSO ADDED A TABLE MOTION BASED ON SB 243 PASSAGE OR FAIL. REP. MCGEE LATER WITHDREW THE TABLE MOTION.) Motion carried 20-0.**
{Tape : 2; Side : B; Approx. Time Counter : 124 - 348}

EXECUTIVE ACTION ON SB 243

Motion: **REP. MCGEE** moved that **SB 243 BE CONCURRED IN.**
Motion/Vote: **REP. NOENNIG** moved that **SB 243 BE AMENDED. Motion carried 16-4 with Gutsche, Hurdle, Kitzenberg, and Wyatt voting no.**
Motion: **REP. MCGEE** moved that **SB 243 BE CONCURRED IN AS AMENDED.**
Motion/Vote: **REP. MCGEE** moved that **SB 243 BE AMENDED. Motion failed 9-11 with P. Clark, Eggers, Facey, Gallus, Gutsche, Hurdle, Kitzenberg, Noennig, Soft, Williams, and Wyatt voting no.**
Motion/Vote: **REP. SOFT** moved that **SB 243 BE AMENDED. Motion carried 16-3 with Clark, Jore, and Kitzenberg voting no. (Rep. McGee absent during voting.)**
Motion/Vote: **REP. MOLNAR** moved that **SB 243 BE AMENDED. Motion failed 8-11.(voice vote)**
Motion/Vote: **REP. ANDERSON** moved that **SB 243 BE CONCURRED IN AS AMENDED. Motion carried 13-7 with Ahner, R. Clark, Curtiss, Jore, McGee, Molnar, and Younkin voting no.**
{Tape : 2; Side : B; Approx. Time Counter : 348 - 550}
{Tape : 3; Side : A; Approx. Time Counter : 0 - 550}
{Tape : 3; Side : B; Approx. Time Counter : 0 - 240}

EXECUTIVE ACTION ON SB 250

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE SB 243

Call to Order: By **CHAIRMAN FRED THOMAS**, on March 26, 1999 at 3:39 P.M., in Room 317 Capitol.

ROLL CALL

Members Present:

Sen. Fred Thomas, Chairman (R)
Sen. Mike Halligan (D)
Sen. Duane Grimes (R)
Rep. Dan McGee (R)
Rep. Jim Shockley (R)
Rep. Tom Facey (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Valencia Lane, Legislative Services Division

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: SB 243

Discussion:

EXHIBIT(ccs68sb0243a01) was handed out to the Committee members.

CHAIRMAN THOMAS asked **(EXHIBIT 1)** amended sections that **REP. MOLNAR'S** amendments took out.

REP. MCGEE explained the existing law in the amendment was stricken. **REP. MOLNAR'S** amendment was to strike all the new language and basically put it back into its original form.

CHAIRMAN THOMAS asked if **REP. CLARK'S** amendment had amended this section, then **REP. MOLNAR'S** amendment took it out of the bill, so the first and second amendments are gone.

REP. MCGEE responded, "that is correct".

CHAIRMAN THOMAS discussed with other Committee members why the amendments were stricken and the words 'serious crimes' were taken out.

SEN. HALLIGAN thought they were stricken because Judge Larson did not want the youth after their hearing, when they were continuing the second part of their sentence, to be sent back to prison. They would be sent to boot camp or a pre-release center.

REP. MCGEE said if he remembered correctly, in order to continue jurisdiction, it was worthwhile to send a person to a pre-release center. There are other programs affiliated with pre-release centers which are not affiliated with anything else.

CHAIRMAN THOMAS alleged following that, it does mention pre-release center.

REP. SHOCKLEY said it was his understanding they put the juveniles in Pine Hills until they turn 18, even if they are serving a long sentence. After they turn 18, they have to take them from Pine Hills. They had to research State adult correction facilities, otherwise they would go to boot camp or a pre-release center.

CHAIRMAN THOMAS asserted on **REP. CLARK'S** amendments, amendment 1 and 2 were eliminated by **REP. MOLNAR'S** amendments. Amendment number 3 is still in place. He asked **SEN. HALLIGAN** to address **REP. MOLNAR'S** amendments.

SEN. HALLIGAN informed the Committee the Supreme Court case which dealt with the Extended Jurisdiction Act in finding parts of it

unconstitutional, they, in part hung their hat on the retribution which seemed to be in the existing purpose clause of the Youth Court Act. When you read the constitutional rights of youths, they have the same rights as adults, unless precluded by laws which enhance the protection of such persons. With Judge Larson's help, they tried to keep the immediate consequences which still try to take out any retribution parts of that and address the court's concerns.

REP. MCGEE stated if you look at the capitalized language on lines 10 and 11, that was offered as an amendment in House Judiciary, it was determined it was inappropriate language. The application of natural and logical consequences when you are dealing with something in the Youth Court Act does not apply. This is why this particular section was re-visited. Therefore, the substitute motion was to strike the whole section. He said he finds the language in current law to be appropriate.

REP. SHOCKLEY understood the Supreme Court's problem with this is that as drafted, a youth could get more than an adult. He thought there might be a problem with the word 'retribution'.

SEN. GRIMES explained **REP. SOFT** deals with all this in his line of work and takes these types of kids to decreasing areas of penalties in a short time. To child psychologists this may have some meaning whereas it doesn't necessarily in the law. He thought there might be another way to phrase it to make it technically correct, but would still capture **REP. SOFT's** intentions.

SEN. HALLIGAN alleged there to be confusion on who drafted what amendments. He asked where the word 'retribution' came from.

REP. SHOCKLEY answered that is the way the regular statute read.

SEN. HALLIGAN asked **Sandra Oitzinger, Executive Director, Juvenile Probation Officer's Association** for comments on this. **Ms. Oitzinger** explained what the court was commenting on was the State's interpretation of what the legislature's intent was at the time they passed it. The State asserts that the Extended Jurisdiction Prosecution Act was designed by the legislature to address the rising tide of juvenile criminal conduct. She does believe Judge Larson wanted to be clear that we are not talking retribution in this situation.

REP. SHOCKLEY suggested they take **REP. MOLNAR'S** amendment out and take Judge Larson's amendment out and right after court put a period on line 14. Start a new sentence which says retribution is not a consideration. He said we should be concerned with

community protection as well as the rehabilitation of the juvenile.

CHAIRMAN THOMAS asked if it could be found that youth delinquency through immediate, consistent, forceful and avoidable consequence could be retribution. Is that what the court was talking about? He didn't see how it could be. What about leaving that first sentence in and leaving in Judge Larson's language as well?

REP. SHOCKLEY thought all they needed to do is take out the word 'establish'.

SEN. GRIMES asked if they struck the first three lines and started with **REP. CLARK'S** amendment language instead of 'natural, logical, and legal'. Would it still say the same thing?

REP. SHOCKLEY stated either would work for him.

SEN. HALLIGAN explained part of the criticism of the Youth Court Act which was done by the auditors was the fact there were no immediate, consistent and enforceable language. Youth Justice Committee met for 18 months to work on that language.

Motion: **SEN. GRIMES** moved that **THE AMENDMENT BE ADOPTED.**

Discussion:

REP. MCGEE remarked the language by **REP. SOFT** came directly from the language from the Yellowstone Treatment Center policy. He said he is not an attorney, but John McMaster told him this cannot be done, so that is why is has been re-visited. John McMaster explained it to the committee, and it was taken out. That is the reason they went back to **REP. MOLNAR'S** language. **REP. MCGEE** stated he agreed with **SEN. HALLIGAN.** He suggested this Committee not put back in the language on lines 10 - 12.

SEN. THOMAS proposed the yellow copy without **REP. SOFT'S** language including leaving the old language in, and putting in Judge Larson's language. **SEN. THOMAS** read this to the Committee.

SEN. GRIMES asked what to do with the words 'detention, competency and community protection'.

SEN. HALLIGAN explained those are the programs which meet the constitutional language.

REP. MCGEE contended they are in the language twice, so we do not need the capitalized version.

SEN. THOMAS explained they were stricken, then the underlined language put them back in.

SEN. HALLIGAN thought the capitalized version could be deleted.

REP. SHOCKLEY thought those words should be left in the language.

Substitute Motion: **SEN. HALLIGAN** made a substitute motion **TO FURTHER AMEND SB 243.**

Discussion:

SEN. THOMAS clarified **SEN. HALLIGAN'S** motion by explaining they would not adopt **REP. MOLNAR'S** amendments.

SEN. HALLIGAN further explained in a Conference Committee, the Committee has to amend the House amendments. This, in effect, would be reinserting section one with our Conference Committee amendments.

Vote: Motion that **THIS AMENDMENT BE ADOPTED carried unanimously.**

ADJOURNMENT

Adjournment: 4:11 P.M.

SEN. FRED THOMAS, Chairman

Gilda Clancy, Secretary

FT/GC

EXHIBIT(ccs68sb0243aad)